AN ADDRESS

TO

THE COMMITTEE

OF THE

STOCK EXCHANGE,

UPON THE QUESTION OF

CANADA SHARES.

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CANADA COMPANY.

THE principle on which the operations are carried on by the members of the Stock Exchange, with each other, for the public, or on their own account, seems deeply involved in the question of the "Canada Shares." This principle is undoubtedly a reliance on the honour of the members:—the niceties of the law are not permitted to embarrass transactions which are founded on mutual confidence; and if it were not for this high feeling of honour, their

agency for the public would, in time, be confined to bargains for money, and transactions from one account to another would be limited to the members themselves. Stock transactions have, of late years, become so various that, if a scrupulous adherence to all bargains were not enforced, the committee would have endless discussions before them in the settlement of accounts: the doctrine of "expediency" once admitted,—and there is an end of principle: each precedent, however slight, would form a ground for after changes, and every modification give rise to new and more difficult questions. The very case under discussion, of the Canada shares, is sufficient evidence that there will always be parties interested enough to raise doubts and

difficulties if they see a chance of success.

If the importance of this leading principle be not overstated;—if it be conceded that the first duty of the committee is to maintain unimpaired the confidence of the public in the validity of all "stock transactions," they will naturally be very cautious, in any regulations which may be made for the mutual interests of the members of the Stock Exchange, to observe a consistent undeviating course towards the public for whom the members act. Cases may certainly arise to call for the interposition of the committee; when, for instance, an extensive fraud or some improper collusion has been detected, which it is necessary to mark with reprobation,—or

where some general regulation for the *future* guidance and protection of the public is called for; but in all other cases it will be found highly injurious to the credit of the Stock Exchange to cancel, as it were by an *ex post facto* law, engagements already made. The Canada question might perhaps be safely left on the basis of this leading principle; but, as the decision of the committee will affect the interests of many individuals, and as the arguments adduced by the purchasers of shares appear untenable and fallacious, it may be well to examine them somewhat in detail.

These arguments are:

1st. That the prospectus having noticed the intended purchase of the "clergy reserves" of land in Canada as

one of the objects of the company, and as this purchase has not been completed, the buyers of shares have not the value which was originally contemplated.

2nd. That the proposed company had no legal existence; and most of the bargains having been made previous to the act of parliament, which passed the 27 June, they were legally defective and liable to the provisions of the "Bubble "Act."

3d. That the prospectus and act of parliament having reference to a subscribed capital of 1,000,000l. in 10,000 shares of 100l. each, and the directors having, by a circular letter of the 1st June 1826, given an option to the shareholders to withdraw, which had been accepted to the extent of 1,095 shares,

and confirmed at a general meeting of the 12th July, 1826, this diminution of the capital has worked a dissolution of partnership between the subscribers.

4th. That the sellers of the shares, who had signed the deed of agreement with each other, knew the contents of it, whereas the buyers could not have access to it, as it was not made public.

Answer to the 1st argument,—namely, that, as the clergy reserves have not been obtained, the company is at an end.

Undoubtedly one of the clauses of the prospectus states that Lord Bathurst has "agreed to dispose" of the lands reserved for the crown, and the half of the clergy

reserves; and this purchase is stated to be one of the objects of the company; other equally important objects being also set forth. But another clause of the prospectus provides, that "the court of "directors shall have power to make all "necessary regulations for the manage- "ment of the company, and to adopt such "measures as they may find expedient for "obtaining the charter." It was afterwards found that Lord Bathurst was unable to fulfil that part of his agreement which had reference to the "clergy reserves;" but is it reasonable to say that this virtually broke up the company? Have any of the joint stock associations been able to adhere so strictly to the letter of their prospectus, that they have obtained exactly *all* they expected, and

no more? If the prospectus of each company were to be the exact measure of the shareholders' responsibility, and the bargains on the Stock Exchange were to be all void, in cases where either more or less was done than originally proposed by the prospectus, perhaps it is not too much to advance, that the buyers of shares in almost all the companies might apply to the committee to be released on this ground; and therefore it would be a very dangerous precedent to admit the invalidity of bargains on such a plea.

But surely it must be admitted that, under the clause of the prospectus, enabling the directors "to adopt any measures they might find expedient for obtaining the charter," they were fully

justified in taking an advantageous equivalent, offered by Lord Bathurst, for the purpose of accomplishing this first great object, "The Charter," which they could not have done without acceding to the modified agreement. This equivalent, the directors say in their circular letter of 1st June 1826, "is *advantageous* "to the interests of the subscribers, being "a compact territory of one million of "acres, in the *best* portion of the pro- "vince with regard to soil and climate, "at a rate *considerably lower* than the "price determined by the commissioners, "and a return of one-third of the pur- "chase money, to be expended in public "works and improvements."

And even if it could be admitted for a moment, that these "powers" under the prospectus and act of parliament were

insufficient to authorize the acceptance of any equivalent, however favourable to the interests of the shareholders, it may be confidently said, that when the "bargains" now under discussion were made, the progress already effected in the constitution of the company precluded all further appeal to the prospectus; because the proprietors had signed the deed of agreement of the 11th January 1825, by which that prospectus was superseded. The prospectus was published for the purpose of inviting original subscribers to the undertaking; and having effected this object, and the original members, or those holding their shares, having entered into an "agreement" together, they were now bound by this subsequent and more solemn act.

Then, in fact, for the first time, the

mpany had existence—then the sales by "scrip receipts" ceased, and a certificate of so many shares was given to each partner signing the deed, the penalty for non-execution of which is declared in the prospectus to be the forfeiture of the deposit. It is important to observe the nature of this agreement:—it declares that the parties "have subscribed to the capital of the Canada Company, to be established by a royal charter, for the purpose of "purchasing and settling *certain lands belonging to the crown in Upper Canada, and for other purposes to be expressed in the said charter.*" Not a word is here said of the clergy reserves, the grant of which had already become doubtful; but the parties agree to the establishment of the

company, as therein expressed, " for the " purchase and settlement of certain waste " lands belonging to the crown and for " other purposes ;" and in confirmation of their full acquiescence in this deed, as the essence of the future company, and for the purpose of binding all parties effectually, a further payment of £5 per share was made at the moment of signing it.

It is therefore contended, in answer to the first argument,

1st. That in all cases of recently established companies, some deviations have been made from the prospectus ; and if the bargains in Canada shares are invalid on this ground, the bargains in other shares are equally so.

2d. That this prospectus sanctions the

deviation made from that part of the plan which relates to the clergy reserves, because it empowers the directors "to adopt all such measures as they may find expedient for obtaining the charter," and Lord Bathurst having refused the charter unless they accepted the equivalent offered for the clergy reserves, their acceptance of his lordship's terms was a measure "expedient for obtaining the charter."

3d. That this exchange was advantageous to the company, and therefore the deviation, if so it may be called, cannot justify the refusal to complete the bargains, on the ground of the shares being less valuable than was originally contemplated.

4th. That even if the directors had not been empowered by the prospectus,

as they clearly were, to make the change, the subsequent deed of agreement of January 1825, signed by all the shareholders, many of whom were not original subscribers, would have superseded the necessity of adhering strictly to the letter of the prospectus in regard to the "clergy reserves;" because this agreement makes no mention of such "reserves," but expressly declares that they subscribe "for the purchase and settlement of the crown lands, and for other purposes to be expressed in the said charter."

Answer to the 2d argument,—namely, that the proposed company had no legal existence.

It will not require much reasoning to prove the insufficiency of this argument

for the non-performance of contracts of honour. If the bargains are not strictly of a legal character, which it is maintained they are, and only give parties an honourable claim, it is the strongest argument in favour of their confirmation in a court of honour. If the Canada Company was not legal, even with its act of parliament, and the pledge of the government to grant a charter, are the numerous insurance and other companies legal whose shares are daily bought and sold in the market? Into what an inextricable labyrinth would this argument of illegality lead the Stock Exchange, if once admitted?

Answer to the 3d argument, viz. "that by a diminution of the shares, a dissolution of the first partnership has taken

place, and a new company formed," is full of inconsistency.

In the first place: *Several facts are assumed* which are not correct; as, that the modified agreement with Government made it necessary for the directors to give an option to shareholders to withdraw—whereas no such necessity existed; for their standing counsel declared, that they were authorised to make the modified agreement; and the directors themselves admit, that it was more advantageous than the original. Again, it is assumed that the partnership was dissolved by mutual consent at the meeting of the 12th July; whereas no such resolution was ever proposed *; and a large proportion of the share-

* See the resolutions sent to each shareholder in a circular letter.

holders present protested against any measure which might, directly or indirectly, alter the constitution of the company; and several persons addressed the meeting against any act calculated to have this effect.—Again, it is incorrectly assumed, that the remaining proprietors formed a new company, which is plainly contradicted by the words of the resolutions at that meeting; for the directors are authorised to pay off the dissentients only "*when the charter shall have been obtained:*" and this charter, which provides for a capital *not exceeding* one million, empowers the directors to make any alterations which may be agreed to by the majority of proprietors at a general meeting—fully carrying on the principle and existence of the same com-

pany. The charter was given to the original company, in pursuance of the act of parliament—the act of parliament was for the original company;—and therefore, if it be a new company at all, it is a company without an act of parliament or a charter. So much for the *facts* of the case.

The inconsistency of the reasoning on these facts, is equally palpable with the incorrect manner in which they are stated; for it is first argued, that the company never had any existence at all; next, that the non-existent company was dissolved at a general meeting; and then that an act of parliament and a charter from the crown, incorporating one company, may, on its dissolution, be transferred to a new company, like a bill of

exchange, or any other disposable property.

And in order to maintain this reasoning, a reference is made to the law of the case; but it has been already observed, that the committee of the Stock Exchange have to decide these contracts as debts of honour, not as claims to be settled by the nice technicalities of the law; and therefore it is only necessary again to observe, that the standing counsel of the company declared, that the directors had full power to accept the modified agreement with Government, and that no dissolution could take place without the consent of all parties.

Answer to the 4th argument, namely, "That the sellers of the shares, who had signed the agreement of January 1825, knew the contents of it; whereas the buyers could not have access to it, as it was not made public."

Let the fact be admitted to its full extent, in regard to persons not being already proprietors, and having bought shares,—what would it avail? it equally applies to the purchase and sale of shares in every company: the proprietor who signs a deed of agreement, or a deed of settlement, is supposed to know, or entitled to examine, at any time, the instrument under which he is a partner; the purchaser of his shares may not have the same advantage,—and whose fault is it but his own if he buys in ignorance?

It is his duty, before he makes the purchase, to acquaint himself with the responsibilities he assumes, and the value of the property for which he pays his money. If he cannot obtain access to the deed of settlement, he will, if he be a prudent man, abstain from any purchase of shares; but in the present case the deed was open to the inspection of the proprietors at all times, and any one might have had free access to it, or have been informed of its contents, if he had taken the trouble to inquire.

But how does this plea of ignorance apply to the case of proprietors,—perhaps directors, who have already signed the deed, and who have bought shares from other proprietors? and this is the case with the greater number of bargains

under discussion. How can *they* plead ignorance of the deed they have themselves signed? Here may, perhaps, be parties having access to all the documents of the company,—the correspondence with Government, the report of the commissioners, and, consequently, to every source of information as to the value of the intended grant, and the probabilities of immediate or ultimate success. Can such plead ignorance of the deed under which they bought?—a deed framed, perhaps, and settled under their authority, and which they had declared it necessary for every one to sign on pain of his shares being forfeited. And—to put an hypothetical case,—suppose any directors of the company were also members of the Stock Exchange;—suppose

that, having made large purchases under the circumstances referred to, and with such means of information, they should advocate the rescinding of the bargains,—a measure calculated to bring into question all the future transactions of the Stock Exchange, and generally to impair the confidence of the public in its dealings;—suppose they were to say that the confirmation of the bargains would occasion a heavy loss to them and their friends;—that even if they were to pay for their purchases, yet, having sold their shares again in the market, they would be unable to enforce the bargains against other persons not members of the Stock Exchange; and therefore they should hope that the committee would protect them from such

inconvenient consequences?—what answer but the following could the committee make: "You have, as directors, "knowing all the facts of the case, pur- "chased shares in the Canada Company; "you have sold them again on the same "principles on which you bought them, "whether to responsible persons or not "has no reference to the question; and "we cannot permit the character of the "Stock Exchange, over which we pre- "side, to be compromised for your con- "venience. As members of this commu- "nity, whose debts are debts of honour, "you should be the most strenuous advo- "cates of strict and consistent principles "in the settlement of them: you are "equally interested with ourselves in "maintaining the integrity of all its

" transactions; and although you may " suffer by the confirmation of the bar- " gains in question, we cannot do an act " of injustice to others, who having bought " these shares at a high premium before " they sold them to you, will suffer a " heavy loss if the bargains are set aside; " therefore the question must rest on its " own merits."

Any further general observations appear unnecessary. If the market value of the Canada shares had increased instead of diminished, the committee of the Stock Exchange would never have heard any argument of a new company, nor any complaints that Government had made a more valuable grant than that stipulated for.

The change of times, however, has af-

fected this property, in common with all others, and the shares are depreciated: but the rules of justice remain unalterable, and the whole case is with confidence submitted to the known integrity of the committee of the Stock Exchange, who, as a body and as individuals, have a duty to perform to themselves, and to the public.

THE END.

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